

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

GWENDOLYN MOORE, Plaintiff, vs. GRAPHIC PACKAGING INTERNATIONAL, LLC., Defendant.	4:19-cv-4112 COMPLAINT (JURY TRIAL DEMANDED)
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Plaintiff Gwendolyn Moore brings this action for retaliation, discrimination and of violations of law, stating the following claims against the Defendant:

PARTIES

1. Gwendolyn Moore ("Plaintiff") is a resident of Davison County, South Dakota. The Plaintiff is a person of Asian descent.
2. Graphic Packaging International, LLC is a company formed in Delaware with its principal office in Atlanta, Georgia. It is one of the largest manufacturers of paperboard and paper-based packaging with more than 70 facilities world-wide. It operates a plant in Mitchell, South Dakota.
3. At all relevant times, the Plaintiff was an "employee" of Graphic Packaging within the meaning of 42 U.S.C. § 2000e(f) and S.D.C.L. § 20-13-1. During her employment, the Plaintiff's employment was based in its Mitchell, SD plant.

JURISDICTION & VENUE

4. This action arises under Title VII of the Civil Rights Act of 1964, as amended at 42 U.S.C. § 2000e *et seq.* ("Title VII"). As such, this Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein pursuant to 28 U.S.C.

§ 1331.

5. The Plaintiff brings additional claims under the South Dakota Human Relations Act as codified at S.D.C.L. § 20-13-1 *et seq.*, and South Dakota common law.

Supplemental jurisdiction is proper for such claims under 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391 because the events or omissions giving rise to the claims occurred within the Southern Division of the District of South Dakota.

FACTUAL ALLEGATIONS

7. In July 2015, the Plaintiff was hired as a glue operator in its Mitchell plant.
8. Plaintiff was the only Asian person on her shift.
9. The Plaintiff was qualified for her position and performed in a manner that met the Defendant's expectations for employees.
10. During her employment, Plaintiff was treated differently and less favorably in terms of disciplinary actions and supervisory surveillance than her similarly situated Caucasian employees.
11. Plaintiff's supervisors blamed Plaintiff for her Caucasian co-worker's performance issues.
12. The Defendant instructs its employees that they are expected to report incidents of suspected discrimination, and it provides a hotline so that employees are encouraged to make such reports.
13. During 2016, Plaintiff reported to her supervisor and a department manager that she believed that Caucasian employees had better terms and conditions of employment and she also reported an alleged incident of sexual harassment.
14. In June 2016, Plaintiff first made a report of race discriminatory behavior by a co-worker

to a supervisor after her co-worker had angrily remarked about her ethnicity and said that she didn't speak English. The following day, Plaintiff reported this incident to another supervisor.

15. To the best of Plaintiff's knowledge, nothing was done about her reports of what constitutes a violation of the Defendant's core values and anti-discrimination policies.
16. On December 26, 2016, someone at the Defendant's Mitchell plant used the Defendant's HR hotline number and made an anonymous report about one of Plaintiff's Caucasian co-workers job performance.
17. Other employees told Plaintiff that there were other hotline calls made about this co-worker.
18. While Plaintiff did not make this call, she was blamed for the call by her supervisors.
19. To the best of her knowledge, the report the Defendant received through the hotline was not investigated. Instead, the Defendant launched an investigation to discover who had made the call.
20. Within days after the anonymous call to the HR hotline, Plaintiff's supervisor first confronted Plaintiff and instructed her that she needed to stop calling the office and getting other employees in trouble. Other Caucasian employees were not similarly confronted.
21. On or about January 13, 2017, Plaintiff's supervisor confronted her and hollered at her about an alleged performance issue. Plaintiff reported this incident to another supervisor because she believed it was retaliatory and because she feared that it encouraged other employees to target her.

22. To the best of her knowledge, Plaintiff's report of alleged retaliation was not investigated.
23. On January 23, 2017, despite her performance, the Defendant issued a negative performance review to Plaintiff and she was denied a raise. Plaintiff was placed on a work improvement plan for an allegedly inability to work well with other people on her shift.
24. On March 20, 2017, the Defendant called Plaintiff to the office to present her with a disciplinary action for suspension and a final warning because Plaintiff had allegedly "being disruptive" and "spreading rumors" about her co-worker regarding the hotline call.
25. In or about April 4, 2017, the Defendant continued to assessed Plaintiff's job performance negatively.
26. On June 16, 2017, one of Plaintiff's Caucasian co-worker hollered at Plaintiff in the workplace in violation of the Defendant's Core Value Respect policy. Plaintiff reported the co-worker's policy violation to her supervisor with a request with the specific time of the violation so that the Defendant could review and observe the complained of behavior on its CCTV policy.
27. On June 16, 2017, Plaintiff called the Defendant's HR hotline twice to report that she was subject to different terms and conditions than her co-worker, identifying an exact date and time so that the Defendant could verify her complaint about her co-worker's behavior via its CCTV footage.
28. On June 18, 2017, Plaintiff was called into the supervisor's office where she was

confronted with an allegation that she had pushed another employee, causing a bruise.

Plaintiff denied the allegation and requested that the CCTV footage of the alleged

incident be reviewed. During the meeting, Plaintiff again stated that she was treated

differently than other employees because of prejudice. Plaintiff was told not to report to work.

29. On June 22, 2017, Plaintiff was called into the office and was told that the CCTV footage did not show her pushing her co-worker.

30. On June 26, 2017, Plaintiff was terminated for allegedly pushing her co-worker.

31. Plaintiff filed her Charge of Discrimination, alleging race discrimination and reprisal, on October 5, 2017.

CAUSES OF ACTION

COUNT ONE

Reprisal Discrimination in Violation of Title VII of the Civil Rights Act of 1964

32. Plaintiff incorporates the foregoing paragraphs by reference.

33. Title VII, 42 U.S.C. § 2000e-3(a) provides in part that it is an unlawful employment practice for an "employer to discriminate against any of his employees or applicants for employment" or "to discriminate against any individual" "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

34. As described herein, Plaintiff was suspended and ultimately terminated in retaliation for her protected conduct in violation of 42 U.S.C. § 2000e-3.

35. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff has suffered loss of past and future income and employee benefits, mental anguish, emotional distress,

humiliation, embarrassment, loss of reputation, and other damages in excess of \$75,000.

36. Plaintiff is entitled to make a claim of punitive damages because the Defendant committed the alleged conduct with reckless disregard and/or deliberate disregard for her rights and safety.

COUNT TWO

Race Discrimination in Violation of Title VII of the Civil Rights Act of 1964

37. Plaintiff incorporates the foregoing paragraphs by reference.
38. 42 U.S.C. § 2000e-2(a)(1) provides that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or to otherwise discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's ... race[.]"
39. The Defendant's conduct described herein violates 42 U.S.C. § 2000e-2.
40. As a result of the Defendant's conduct, Plaintiff has suffered and will continue to suffer past and present loss of income, mental anguish, emotional distress, humiliation, embarrassment, loss of reputation and other damages in an amount in excess of \$75,000.
41. Plaintiff is entitled to make a claim of punitive damages because the Defendant committed the alleged conduct with reckless disregard and/or deliberate disregard for her rights and safety.

COUNT THREE

Reprisal Discrimination in Violation of The South Dakota Human Relations Act

42. Plaintiff incorporates the foregoing paragraphs by reference.
43. The South Dakota Human Relations Act of 1972 makes it an unfair or discriminatory practice to engage in any reprisal, economic or otherwise, against a person by reason of

his or her protected activity, pursuant to S.D.C.L. § 20-13-26.

44. The Defendant's retaliatory conduct described herein, including its treatment toward the Plaintiff, her suspension and her termination, violates S.D.C.L. § 20-13-26.

45. As a result of the Defendant's violations, Plaintiff has suffered and will continue to suffer damages, including past and present loss of income, mental anguish, emotional distress, humiliation, embarrassment, loss of reputation and other damages.

46. Plaintiff is entitled to make a claim of punitive damages because the Defendant committed the alleged conduct with reckless disregard and/or deliberate disregard for her rights and safety.

COUNT FOUR

Race Discrimination in Violation of The South Dakota Human Relations Act

47. Plaintiff incorporates the foregoing paragraphs by reference.

48. The South Dakota Human Relations Act of 1972 makes it an unfair or discriminatory practice to discharge an employee or refuse to hire an applicant because of sex, pursuant to S.D.C.L. § 20-13-10.

49. The Defendant's discriminatory conduct described herein violates S.D.C.L. § 20-13-10.

50. As a result of the Defendant's discriminatory conduct, Plaintiff has suffered and will continue to suffer damages, including past and present loss of income, mental anguish, emotional distress, humiliation, embarrassment, loss of reputation and other damages.

51. Plaintiff is entitled to make a claim of punitive damages because the Defendant committed the alleged conduct with reckless disregard and/or deliberate disregard

for her rights and safety.

RELIEF REQUESTED

WHEREFORE, Plaintiff Gwendolyn Moore prays for judgment against Defendant Graphic Packaging International, LLC as follows:

- A. That the practices of Defendant complained of in this Complaint be determined to violate the rights secured to the Plaintiff under Title VII, the South Dakota Human Relations Act and South Dakota common law;
- B. For all relief available to Plaintiff, including compensatory relief and damages arising from loss of past and future income, benefits, emotional distress, and other damages, with interest on such amounts, and punitive damages in an amount in excess of \$75,000;
- C. For Plaintiff's attorneys' fees, costs and disbursements incurred herein;
- D. For a jury trial on all issues; and
- E. For such further and other relief as the Court deems just and equitable.

Dated this 1st day of July, 2019.

JOHNSON POCHOP & BARTLING


/s/ Stephanie E. Pochop

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Attorney for Plaintiff Gwendolyn Moore

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.